

**RECEIVED  
CENTRAL FAX CENTER**

MAY 03 2005

**Procter & Gamble - I.P. Division****IMPORTANT CONFIDENTIALITY NOTICE**

The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally protected. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone (collect) to arrange for return of the telecopied document to us.

**FACSIMILE TRANSMITTAL SHEET AND  
CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8****TO: - United States Patent and Trademark Office**

Fax No. 703-872-9306

Phone No.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on May 3, 2005, to the above-identified facsimile number.

Cindy Lukas (Signature)

**FROM: \_ (Typed or printed name of person signing Certificate)**

Fax No. 513-622-3300

Phone No. 513-622-0291

Listed below are the item(s) being submitted with this Certificate of Transmission:\*\*

- 1) Original Fee Transmittal
- 2) Appeal Brief (14 pages)

Inventor(s): Graham John Myatt

S.N.: 10/633/738

Filed: August 4, 2003

Docket No.: 9151R

Number of Pages Including this Page: 16

Comments:**RECEIVED  
MAY -4 2005  
OJPE/JCWS**

**\*\*Note:** Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE PTO/SB/17 (12-04)

+

<b>FEE TRANSMITTAL</b> <b>for FY 2005</b> Patent fees are subject to annual revision. Effective December 8, 2004	<b>Complete if Known</b>	
	Application Number	10/633,738
	Confirmation Number	5595
	Filing Date	August 4, 2003
	First Named Inventor	Graham John Myatt
	Examiner Name	Everett NMN White
	Art Unit	1623
<b>TOTAL AMOUNT OF PAYMENT (\$500)</b>		Attorney Docket No. 9151R

<b>METHOD OF PAYMENT</b>				<b>FEE CALCULATION (continued)</b>																																														
1. <input checked="" type="checkbox"/> The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company				<b>5. ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee</th> <th>Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1<sup>st</sup> month</td> <td>(\$120)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2<sup>nd</sup> month</td> <td>(\$450)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3<sup>rd</sup> month</td> <td>(\$1,020)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4<sup>th</sup> month</td> <td>(\$1,590)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5<sup>th</sup> month</td> <td>(\$2,160)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td>(\$130)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (g) Surcharge - Late provisional filing fee or cover sheet</td> <td>(\$50)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500)</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		Fee Description	Fee	Paid	Extension for reply within 1 <sup>st</sup> month	(\$120)	<input type="checkbox"/>	Extension for reply within 2 <sup>nd</sup> month	(\$450)	<input type="checkbox"/>	Extension for reply within 3 <sup>rd</sup> month	(\$1,020)	<input type="checkbox"/>	Extension for reply within 4 <sup>th</sup> month	(\$1,590)	<input type="checkbox"/>	Extension for reply within 5 <sup>th</sup> month	(\$2,160)	<input type="checkbox"/>	Information Disclosure Statement fee	(\$180)	<input type="checkbox"/>	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130)	<input type="checkbox"/>	37 CFR 1.17 (g) Surcharge - Late provisional filing fee or cover sheet	(\$50)	<input type="checkbox"/>	Non-English specification	(\$130)	<input type="checkbox"/>	Notice of Appeal	(\$500)	<input type="checkbox"/>	Filing a brief in support of an appeal	(\$500)	<input checked="" type="checkbox"/>	Request for oral hearing	(\$1,000)	<input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370)	<input type="checkbox"/>	Other:		<input type="checkbox"/>
Fee Description	Fee	Paid																																																
Extension for reply within 1 <sup>st</sup> month	(\$120)	<input type="checkbox"/>																																																
Extension for reply within 2 <sup>nd</sup> month	(\$450)	<input type="checkbox"/>																																																
Extension for reply within 3 <sup>rd</sup> month	(\$1,020)	<input type="checkbox"/>																																																
Extension for reply within 4 <sup>th</sup> month	(\$1,590)	<input type="checkbox"/>																																																
Extension for reply within 5 <sup>th</sup> month	(\$2,160)	<input type="checkbox"/>																																																
Information Disclosure Statement fee	(\$180)	<input type="checkbox"/>																																																
37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130)	<input type="checkbox"/>																																																
37 CFR 1.17 (g) Surcharge - Late provisional filing fee or cover sheet	(\$50)	<input type="checkbox"/>																																																
Non-English specification	(\$130)	<input type="checkbox"/>																																																
Notice of Appeal	(\$500)	<input type="checkbox"/>																																																
Filing a brief in support of an appeal	(\$500)	<input checked="" type="checkbox"/>																																																
Request for oral hearing	(\$1,000)	<input type="checkbox"/>																																																
Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370)	<input type="checkbox"/>																																																
Other:		<input type="checkbox"/>																																																
<b>2. BASIC FILING FEE - Large Entity</b> <table border="1"> <thead> <tr> <th>Application Type</th> <th>FILING FEE</th> <th>SEARCH FEE</th> <th>EXAMINATION FEE</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Utility</td> <td>(\$300)</td> <td>(\$500)</td> <td>(\$200)</td> <td>(Total = \$1000) <input type="checkbox"/></td> </tr> <tr> <td>Design</td> <td>(\$200)</td> <td>(\$100)</td> <td>(\$130)</td> <td>(Total = \$430) <input type="checkbox"/></td> </tr> <tr> <td>Reissue</td> <td>(\$300)</td> <td>(\$500)</td> <td>(\$600)</td> <td>(Total = \$1400) <input type="checkbox"/></td> </tr> <tr> <td>Provisional filing fee</td> <td></td> <td></td> <td></td> <td>(Total = \$200) <input type="checkbox"/></td> </tr> </tbody> </table>				Application Type	FILING FEE	SEARCH FEE	EXAMINATION FEE	Fee Paid	Utility	(\$300)	(\$500)	(\$200)	(Total = \$1000) <input type="checkbox"/>	Design	(\$200)	(\$100)	(\$130)	(Total = \$430) <input type="checkbox"/>	Reissue	(\$300)	(\$500)	(\$600)	(Total = \$1400) <input type="checkbox"/>	Provisional filing fee				(Total = \$200) <input type="checkbox"/>																						
Application Type	FILING FEE	SEARCH FEE	EXAMINATION FEE	Fee Paid																																														
Utility	(\$300)	(\$500)	(\$200)	(Total = \$1000) <input type="checkbox"/>																																														
Design	(\$200)	(\$100)	(\$130)	(Total = \$430) <input type="checkbox"/>																																														
Reissue	(\$300)	(\$500)	(\$600)	(Total = \$1400) <input type="checkbox"/>																																														
Provisional filing fee				(Total = \$200) <input type="checkbox"/>																																														
<b>3. APPLICATION SIZE FEE:</b> Sheets of Spec and Drawings <input type="checkbox"/> (\$250 for each 50 sheets in excess of 100, except for sequence and program listings) SUBTOTAL (2)+(3) (\$0)																																																		
<b>4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE:</b> <table border="1"> <thead> <tr> <th>Total Claims</th> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below <b>Fee Description</b> Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$0)				Total Claims	Extra Claims	Fee from Below	Fee Paid	<input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/>	=	<input type="checkbox"/>																															
Total Claims	Extra Claims	Fee from Below	Fee Paid																																															
<input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>																																															
Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>																																															
Multiple Dependent claims:	<input type="checkbox"/>	=	<input type="checkbox"/>																																															
SUBTOTAL (5) (\$500)																																																		

<b>SUBMITTED BY</b>		<b>Complete (if applicable)</b>	
Name (Print/Type)	Cynthia L. Clay	Registration No. (Attorney/Agent)	54,930
Signature	<i>Cynthia L. Clay</i>	Telephone	(513) 622-0291
		Date	May 3, 2005

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form should be sent to the USPTO.

**RECEIVED  
CENTRAL FAX CENTER**

MAY 03 2005

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/633,738  
Appellant(s) : Myatt et al.  
Filed : August 4, 2003  
Title : Composition Comprising A Defined Polysaccharide Component  
TC/A.U. : 1623  
Examiner : Everett NMN White  
Conf. No. : 5595  
Docket No. : 9151R  
Customer No. : 27752

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450  
Dear Sir,

This Brief is filed pursuant to the appeal from the U.S. Patent and Trademark Office decision mailed December 15, 2004 finally rejecting Claims 1-32. A Notice of Appeal was timely filed on March 15, 2005.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

**STATUS OF CLAIMS**

Claims 1-32 are finally rejected. Claims 1-32 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

05/05/2005 EFLORES 00000102 162480 10633738

01 FC:1402 500.00 DA

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

### STATUS OF AMENDMENTS

No amendment was filed.

### SUMMARY OF CLAIMED SUBJECT MATTER

The present invention claims a composition comprising a portion of psyllium seed husk in combination with one or more of a binder or edible acid. In particular, the present invention is directed to compositions comprising a polysaccharide component comprising xylose and arabinose, wherein the ratio of xylose to arabinose is at least about 3 : 1, by weight and a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof. (Specification page 5, lines 2-8)

### GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

- (I) Rejection Under 35 USC 103(a) Over Nakamura et al (US 6,045,847) in view of Marlett et al (US 6,287,609) or Colliopoulos (US 5,009,916).
- (II) Rejection Under 35 USC 103(a) Over Nakamura et al (US 6,045,847) and Marlett et al (US 6,287,609) in view of Barbera (US 5,425,945).
- (III) Rejection under 35 USC 103(a) over Colliopoulos (us 5,009,916) in view of Marlett et al (us 6,287,609)

### ARGUMENTS

Claims 1-27 are patentable over Nakamura et al (US 6,045,847) in view of Marlett et al (US 6,287,609) or Colliopoulos (US 5,009,916) because the references fail to teach or suggest all of the claimed limitation of the present invention and, therefore, do not establish a *prima facie* case of obviousness.

The Examiner states that claims 1-27 are rejected under 35 USC § 103(a) as being unpatentable over Nakamura et al (US 6,045,847) in view of Marlett et al (US 6,287,609) or Colliopoulos (US 5,009,916). The Examiner states that Nakamura discloses a composition comprising a water-soluble hemicellulose, which is a polysaccharide

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

containing xylose and arabinose. Additionally, the Examiner states that when Nakamura is combined with the Marlett the ratio of xylose to arabinose is at least 3:1. Appellants respectfully traverse the Examiner's rejection on the basis of the comments below.

Appellants respectfully traverse this rejection, as the combination of the references does not establish a *prima facie* case of obviousness because the references fail to teach or suggest all of the claimed limitation of the present invention. To properly reject a claim under 35 U.S.C. §103, three elements must be met by the references to establish a *prima facie* case of obviousness: (a) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; and (b) there must be a reasonable expectation of success; and (c) the prior art references must teach or suggest all the claim limitations. In re Fine, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Merck & Co., Inc., 231 USPQ 375 (Fed. Cir. 1986); In re Royka, 180 USPQ 580 (CCPA 1974). See also MPEP 2142.

The Nakamura references discloses the use of a water-soluble hemicellulose that is derived from husks of oily seeds of soybean, palm, coconut, corn or cottonseed with the oil and protein removed, and lees from grains such as rice or wheat and roots such as beets with the starch or sugar removed. See Column 3, lines 44-51. Each of these fibers is water soluble and is rapidly broken down in the colon. Due to this fact, these fibers have no laxative effects on the bowel and are not effective at treating constipation and other disorders of the bowel. The psyllium seed husks derived polysaccharide components of the present invention are not readily broken down in the colon so they pass through the colon and aid in making the stool soft and easy to eliminate thereby aiding in treating constipation and other bowel disorders. Additionally, Nakamura fails to teach or suggests a polysaccharide component comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3 : 1, by weight, in combination with a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention.

The Examiner states that Marlett teaches the preparation of fractions obtained from psyllium seed husk that comprises xylose and arabinose. However, Marlett fails to

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

teach or suggest a polysaccharide component comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3: 1, by weight, and a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention.

Nakamura and Marlett both fail to provide Appellants' essential polysaccharide component that comprises xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3: 1, by weight, in combination with a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention.

Assuming *arguendo* that one having ordinary skill in the art would combine the disclosures of Nakamura and Marlett, one would still fall short of the of Appellants' claimed invention only to arrive at a water-soluble hemicellulose that is water soluble and is rapidly broken down in the colon and wherein the composition comprises xylose and arabinose. The combination of Nakamura and Marlett do not teach or suggest each and every element of Appellants' presently claimed invention. The polysaccharide component of the present invention, therefore, cannot be rendered as obvious over the teachings of Nakamura in view of Marlett.

The Examiner states that Colliopoulos teaches a psyllium high fiber drink mix made by agglomerating a base comprising at least 5 to 99 weight percent psyllium mucilloid. However, the present invention is directed to certain fractions of psyllium seed husk. The psyllium high fiber in the Colliopoulos reference when it comes in contact with water would form a gelatinous mass and would exhibit very poor dispersability. The present invention comprises composition that contain certain fractions of psyllium seed husk with defined ratio of xylose and arabinose combined with a dispersing component wherein the composition can comprise an agglomerate which comprises from about 10% to about 90% of polysaccharide component which are intended for dilution in an aqueous liquid and provide excellent mouth feel, excellent dispersion in an aqueous liquid and sedimentation. The present invention teaches the removal or fractioning off of the components which contribute to the unpleasant or unsafe qualities of the psyllium husk. Therefore, one of ordinary skill in the art would not be motivated to combine the teaching

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

of Colliopoulos with Nakamura or Marlett since the teachings of Colliopoulos fail to teach or suggest the use of agglomerate that comprises from about 10% to about 90% of a polysaccharide component that are fractioned off of the psyllium seed husk.

The combination of Nakamura and Marlett or Colliopoulos does not teach or suggest each and every element of Appellants' presently claimed invention. The polysaccharide component combined with the dispersing component of the present invention, therefore, cannot be rendered as obvious over the teachings of Nakamura in view of Marlett or Colliopoulos. "Citing a reference that merely indicates that isolated elements and/or features recited in the claims are known is not sufficient basis for concluding that the combination of claimed elements would be obvious." *See Ex parte Hiyamizu*, 10 U.S.P.Q. 2D (BNA) 1393, 1394 (1988). "The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some 'teaching, suggestion, or reason' to combine cited references." *See McGinley v. Franklin Sports, Inc.*, 262 F. 3d 1339, 60 USPQ2d 1001 (Fed. Cir. 2001). "Determinations of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit parameters." *See ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 48 USPQ2d 1321 (Fed. Cir. 1998). "There should be something in the prior art or a convincing line of reasoning in the answer suggesting the desirability of combining the reference in such a manner as to arrive at the claimed invention." *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999).

Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Claims 11 and 14 are patentable over Nakamura et al (US 6,045,847) and Marlett et al (US 6,287,609) in view of Barbera (US 5,425,945) because the references fail to teach or suggest all of the claimed limitation of the present invention and, therefore, do not establish a *prima facie* case of obviousness.

The Examiner states that claims 11 and 14 are rejected under 35 USC § 103 as being unpatentable over Nakamura et al (US 6,045,847) and Marlett et al (US 6,287,609) in view of Barbera (US 5,425,945). The Examiner applies Nakamura et al (US 6,045,847)

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

and Marlett et al (US 6,287,609) as above. Appellants respectfully traverse this rejection, as the combination of the references does not establish a *prima facie* case of obviousness because the references fail to teach or suggest all of the claimed limitation of the present invention.

Appellants assert that the arguments presented above regarding Nakamura and Marlett in traversing the § 103(a) rejection also apply to the present rejection. The references do not teach or suggest the essential polysaccharide component comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3: 1, by weight, in combination with a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention.

The Examiner states that Barbera discloses agglomerated psyllium husk containing edible acid, wherein the edible acid include citric acid and also sets forth the use of maltodextrin as the agglomerating material. Barbera discloses agglomerating material including water dispersible hydrolyzed starch oligosaccharide, monosaccharide, di-saccharide, polyglucose, polymaltose, and mixtures thereof which is used as an agglomerating material coating on said psyllium husk. *See* Column 3, lines 40-52. Also, the edible acids are dispersed throughout the agglomerating material coating on the psyllium husk. *See* Column 4, lines 53-59. In the present invention, the agglomerate comprises the polysaccharide component and can comprise a dispersing component that is not coated on the agglomerate but either a component of the agglomerate or distinct from the agglomerate. The present invention can comprises one or more layers surrounding the agglomerate but these layers are a hydrophobic layer comprised of material selected from fatty acids, fatty acid derivatives, polymers and mixtures.

Therefore, Babera fails to teach or suggest polysaccharide component that comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3:1, by weight, in combination with a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention.



Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

The combination of Nakamura and Marlett or Babera does not teach or suggest each and every element of Appellants' presently claimed invention. The polysaccharide component in combination with the dispersing component of the present invention, therefore, cannot be rendered as obvious over the teachings of Nakamura in view of Marlett or Babera. "Citing a reference that merely indicates that isolated elements and/or features recited in the claims are known is not sufficient basis for concluding that the combination of claimed elements would be obvious." *See Ex parte Hiyamizu*, 10 U.S.P.Q. 2D (BNA) 1393, 1394 (1988). "The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some 'teaching, suggestion, or reason' to combine cited references." *See McGinley v. Franklin Sports, Inc.*, 262 F. 3d 1339, 60 USPQ2d 1001 (Fed. Cir. 2001). "Determinations of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit parameters." *See ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 48 USPQ2d 1321 (Fed. Cir. 1998). "There should be something in the prior art or a convincing line of reasoning in the answer suggesting the desirability of combining the reference in such a manner as to arrive at the claimed invention." *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999).

Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

**Claims 1 and 28-32 are patentable over Colliopoulos (US 5,009,916) in view of Marlett et al (US 6,287,609) because the references fail to teach or suggest all of the claimed limitation of the present invention and, therefore, do not establish a *prima facie* case of obviousness.**

The Examiner states that claims 1 and 28-32 are rejected under 35 USC § 103(a) as being unpatentable over Colliopoulos (US 5,009,916) in view of Marlett et al (US 6,287,609). The Examiner states that Colliopoulos shows that a psyllium high fiber drink mix made by agglomerating a base comprising at least 5 to 99 weight percent psyllium mucilloid is well known in the art. The Examiner concedes that Colliopoulos does not teach the ration of xylose to arabinose to be at least 3:1, for this the Examiner cites

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

Marlett to disclose the preparation of fractions that are comprised mostly of xylose to arabinose. Appellants respectfully traverse this rejection, as the combination of the references does not establish a *prima facie* case of obviousness because the references fail to teach or suggest all of the claimed limitation of the present invention.

Appellants assert that the arguments presented above regarding Nakamura and Marlett in traversing the § 103(a) rejection also apply to the present rejection. The references do not teach or suggest the essential polysaccharide component comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3: 1, by weight, in combination with a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention.

Colliopoulos teaches a psyllium high fiber drink mix made by agglomerating a base comprising at least 5 to 99 weight percent psyllium mucilloid. However, the present invention is directed to the use of agglomerate that comprises from about 10% to about 90% of a polysaccharide component that are fractioned off of the psyllium seed husk.

Marlett fails to teach or suggest a polysaccharide component comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3: 1, by weight, and a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof that is disclosed and claimed in the present invention. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP § 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The combination of Colliopoulos and Marlett does not teach or suggest each and every element of Appellants' presently claimed invention. The polysaccharide component in combination with the dispersing component of the present invention, therefore, cannot be rendered as obvious over the teachings of Colliopoulos in view of Marlett.

Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

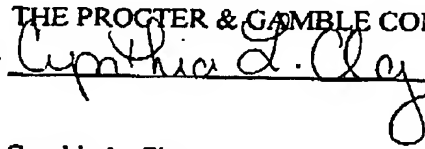
SUMMARY

In view of all of the above, it is respectfully submitted that the aforementioned rejections are erroneous. The Board's reversal of the rejections is respectfully requested.

Respectfully Submitted,

THE PROCTER & GAMBLE COMPANY

By

  
Cynthia L. Clay  
Registration No. 54,930  
(513) 622-0291

May 3, 2005

Customer No. 27752

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

## CLAIMS APPENDIX

1. (original) A composition comprising:
  - (a) a polysaccharide component comprising xylose and arabinose, wherein the ratio of xylose to arabinose is at least about 3 : 1, by weight;  
and;
  - (b) a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof.
2. (original) The composition according to Claim 1 wherein when:
  - (a) the composition comprises a binder, at least one binder is selected from the group consisting of polyols and starches;
  - (b) the composition comprises a suspending agent, at least one suspending agent is a gum; and
  - (c) the composition comprises an edible acid, at least one edible acid is selected from the group consisting of lactic acid, citric acid, malic acid, fumaric acid, adipic acid, phosphoric acid, gluconic acid, tartaric acid, ascorbic acid, acetic acid, phosphoric acid, and succinic acid.
3. (original) The composition according to Claim 2 comprising a binder.
4. (original) The composition according to Claim 3 further comprising agglomerates, wherein the agglomerates comprise at least a portion of the polysaccharide component and binder.
5. (original) The composition according to Claim 4 wherein the agglomerate comprises from about 10% to about 90% of polysaccharide component, by weight of composition.

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

6. (original) The composition according to Claim 4 comprising from about 20% to about 50% of polysaccharide component, by weight of composition.
7. (original) The composition according to Claim 4 wherein the agglomerate comprises from about 30% to about 70% of polysaccharide component, by weight of composition.
8. (original) The composition according to Claim 4 wherein the agglomerates comprise from about 10% to about 90% of xylose and arabinose, by weight of the agglomerates.
9. (original) The composition according to Claim 8 wherein the polysaccharide component further comprises a component selected from the group consisting of galactose, glucose, uronic acid, and mixtures thereof.
10. (original) The composition according to Claim 9 wherein the agglomerates comprise from about 10% to about 90% of binder, by weight of the agglomerates.
11. (original) The composition according to Claim 10 wherein the binder comprises maltodextrin.
12. (original) The composition according to Claim 10 wherein the agglomerates comprise from about 20% to about 80% of xylose and arabinose, by weight of the agglomerates.
13. (original) The composition according to Claim 10 wherein the agglomerates comprise from about 10% to about 60% of binder, by weight of the agglomerates.
14. (original) The composition according to Claim 13 wherein the binder comprises maltodextrin.

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

15. (original) The composition according to Claim 14 wherein the agglomerates comprise from about 30% to about 70% of xylose and arabinose and from about 20% to about 50% of binder, all by weight of the agglomerates.
16. (original) The composition according to Claim 15 further comprising a component selected from the group consisting of lubricating agents, emulsifiers, surfactants, cellulosic materials, and mixtures thereof.
17. (original) The composition according to Claim 3 comprising an edible acid.
18. (original) The composition according to Claim 17 wherein the agglomerates comprise an edible acid.
19. (original) The composition according to Claim 18 wherein at least one edible acid is citric acid.
20. (original) The composition according to Claim 18 wherein the agglomerates comprise from about 0.001% to about 8% of edible acid, by weight of the agglomerates.
21. (original) The composition according to Claim 20 wherein the agglomerates comprise from about 1% to about 6% of edible acid, by weight of the agglomerates.
22. (original) The composition according to Claim 4 comprising a starch, wherein the agglomerates and at least a portion of the starch are physically distinct.
23. (original) The composition according to Claim 22 comprising from about 10% to about 90% of starch, by weight of the composition.

Appl. No. 10/633,738  
Atty. Docket No. 9151R  
Appellant Brief May 3, 2005  
Customer No. 27752

24. (original) The composition according to Claim 4 comprising a gum, wherein the agglomerates and at least a portion of the gum are physically distinct.
25. (original) The composition according to Claim 24 comprising from about 0.001% to about 10% of gum, by weight of the composition.
26. (original) The composition according to Claim 25 wherein at least one gum is selected from the group consisting of tara gum and guar gum.
27. (original) The composition according to Claim 1 further comprising an aqueous liquid.
28. (original) A method of preparing a product comprising admixing the composition according to Claim 1 with an aqueous liquid.
29. (original) The method according to Claim 28 wherein the aqueous liquid comprises water.
30. (original) The method according to Claim 28 wherein the aqueous liquid comprises fruit or vegetable juice.
31. (original) A method of providing a benefit selected from the group consisting of normalizing bowel function, inducing laxation, providing dietary fiber, reducing serum cholesterol levels, and combinations thereof, comprising orally administering a product comprising the composition according to Claim 1 to a mammal in need of the benefit.
32. (original) The method according to Claim 31 comprising admixing the composition according to Claim 1 with an aqueous liquid to form the product.